

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

Kenneth W. Petersen, Jr.,

Civil Action No. 5:22-cv-5064

Plaintiff,

vs.

**PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Rapid City, Pierre & Eastern Railroad, Inc.

Defendant.

Plaintiff Kenneth Petersen, Jr. respectfully moves this Court under Fed. R. Civ. P. 56 for an order granting partial summary judgment on his claim against Defendant Rapid City, Pierre & Eastern Railroad, Inc., and will move the Court to find the following:

1. That on August 2, 2019, Rapid City, Pierre & Eastern Railroad, Inc. violated the FELA, as a matter of law based on its uncontroverted evidence, including evidence that Rapid City, Pierre & Eastern Railroad, Inc. violated 49 C.F.R. § 213.103 and 49 C.F.R. § 213.239.

2. Rapid City, Pierre & Eastern Railroad, Inc.'s violations of the FELA based on its violation of 49 C.F.R. § 213.103 and 49 C.F.R. § 213.239 caused, in whole or in part, the August 2, 2019 incident resulting in some injury to Plaintiff as a matter of law;

3. Rapid City, Pierre & Eastern Railroad, Inc.'s affirmative defenses of sole cause or contributory negligence are unsupported by the law and facts of this case, and defenses must be stricken as a matter of law; and

4. Rapid City, Pierre & Eastern Railroad, Inc. shall be sanctioned for its failure to preserve critical evidence.

Plaintiff's motion is supported by memoranda of law (opening and reply) and declarations that will be timely filed.

Dated: August 1, 2023

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

/s/ Jeffery D. Collins

Jeffery D. Collins

909 Saint Joseph Street, Suite 800

Rapid City, SD 57701

(605) 348-342-2592

jcollins@lynnjackson.com

and

HUNEGS, LENEAVE & KVAS, P.A.

Paul Banker

1000 Twelve Oaks Center Drive, Suite 101

Wayzata, Minnesota 55391

(612) 339-4511

(612) 339-5150 Fax

pbanker@hlklaw.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** was filed via CM/ECF on August 1, 2023 which sent electronic notice of filing to the following:

William G. Beck
Seth Lopour
Woods, Fuller, Shultz & Smith, P.C.
P.O. Box 5027
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027
bill.beck@woodsfuller.com
seth.lopour@woodsfuller.com

Chad M. Knight
William McFadden
Knight Nicaastro MacKay, LLC
1401 Walnut Street, Suite 200
Boulder, CO 80302
knight@knightnicaastro.com
mcfadden@knightnicaastro.com

/s/Jeffery D. Collins

Jeffery D. Collins